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4 Plaintiff in pro per

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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

James Alan Bush,) Case No.: C 08-01354 (RS) JF
Plaintiff,)
) MOTION FOR PERMISSION TO APPEAL
) IN FORMA PAUPERIS
v.)
) [Fed. R. App. P. 24(b)]
Sunnyvale Department of Public)
Safety, et al.,)
)
Defendants.) Judge Jeremy Fogel
)

MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

James Alan Bush, Plaintiff, moves the Court for an order permitting him to prosecute an appeal from the judgment entered by this Court on June 20th, 2008, in forma pauperis.

GROUND FOR MOTION

1. This motion is authorized by the provisions of Section 1915 of Title 28 of the United States Code, and by Rule 24 of the Federal Rules of Appellate Procedure.
2. The required Affidavit of James Alan Bush, which is attached in support of this motion as Exhibit "A", shows that James Alan Bush is "a person unable to pay . . . fees or give security therefor" within the meaning of Section 1915(a)(1) of Title 28.
3. James Alan Bush desires to assert on appeal that the decision of this court is erroneous in that the allegations in the draft complaint filed in this matter are identical to the allegations in previous complaints for which permission to proceed in forma pauperis was granted.
4. The assertion of contradiction described above constitute arguable assertions of precedence, and are in fact supported by the complaints and orders granting permission to proceed in forma pauperis for cases initiated by the plaintiff in this court.
5. In seeking to proceed in forma pauperis, James Alan Bush is not required to establish that he will actually prevail on appeal, but only that he desires to assert arguments on appeal that are not "frivolous." See, e.g., *Free v. United States*, 879 F.2d 1535, 1536 (7th Cir. 1989). An appeal is not "frivolous" within the meaning of Section 1915 when it asserts any contention that is, conceivably, arguable. See, e.g., *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). As noted in Paragraph 4 of this motion, there is authority that supports that arguments that James Alan

1 Bush desires to assert on appeal.

2 For all of the reasons stated in this motion, James Alan Bush
3 respectfully requests that this motion be granted.

4 Petitioner: 

5 Dated: 6-25-08